

*1 Office of the Attorney General
State of Tennessee

Opinion No. **93-65**
November 29, 1993

Status of "911 tapes" under Public Records Act

The Honorable Keith Westmoreland
State Representative
Room 214, War Memorial Building
Nashville, TN 37243-0102

QUESTION

Whether "911 tapes," which are not part of an ongoing police investigation, are open to the public.

OPINION

It is the opinion of this Office that, generally, a 911 tape made or received by a state or local governmental agency in connection with the transaction of its official business would be a public record open for inspection in accordance with T.C.A. § 10-7-503. We have found no state law providing otherwise for "911 tapes" per se. Because the contents of a 911 tape may vary, however, along with the facts and circumstances surrounding a particular tape, each request to inspect a 911 tape should be examined on a case-by-case basis.

ANALYSIS

Section 10-7-503 of Tennessee Code Annotated provides that "[a]ll state, county and municipal records ... shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee ... unless otherwise provided by state law." T.C.A. § 10-7-503(a) (Supp.1993). The proper test in determining whether material is a public record is whether it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn.1991). Application of this test requires an examination of the totality of the circumstances. *Id.*

The Emergency Communications District Law is found at T.C.A. §§ 7-86-101, et seq. The General Assembly has declared the number 911 as the primary emergency telephone number in Tennessee. T.C.A. § 7-86-102(a) (Supp.1993). A county or municipal legislative body may create an emergency communications district by

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resolution or by ordinance, and establishment of the district is subject to a vote "for" or "against" by voters within the boundaries of the proposed district. T.C.A. § 7-86-104 (1992). A district created under the law is deemed to be a municipality. T.C.A. § 7-86-106 (1992). The powers of an emergency communications district are vested in its Board of Directors. Id. The Board is responsible for creating an emergency communications service that has the capability of utilizing at least one of four methods in response to emergency calls. T.C.A. § 7-86-107 (1992). These methods and their statutory definitions are as follows:

'Direct dispatch method' means a 911 service in which a public service answering point, upon receipt of a telephone request for emergency services, provides for the dispatch of appropriate emergency service units and a decision as to the proper action to be taken;

T.C.A. § 7-86-103(2) (Supp.1993); T.C.A. § 7-86-107(a)(1).

'Referral method' means a 911 service in which a public safety answering point, upon the receipt of a telephone request for emergency services, provides the requesting party with a telephone number of appropriate public safety agencies or other providers of emergency services;

*2 T.C.A. § 7-86-103(5); T.C.A. § 7-86-107(a)(2).

'Relay method' means a 911 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays such information to the appropriate public safety agency or other agencies or other providers of emergency service for dispatch of an emergency unit;

T.C.A. § 7-86-103(6); T.C.A. § 7-86-107(a)(3).

'Transfer method' means a 911 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers such request to an appropriate public safety agency or other provider of emergency services;

T.C.A. § 7-86-103(10); T.C.A. § 7-86-107(a)(4).

The Emergency Communications District Law does not use the term "911 tape" that is used in the opinion request. From the statutes above, we assume that a "911 tape" is an audio tape recording of a telephone request for emergency services. We further assume for purposes of this opinion that the tape recording is lawfully made by a state or local governmental agency in connection with the transaction of its official business. It would appear from the statutes, for example, that the governmental agency making the recording might be serving as a "public service answering point," "public safety agency," or "provider of emergency services" as those terms are used in T.C.A. § 7-86-103. See generally, Op.Tenn.Atty.Gen. U91-154 (December 4, 1991) (opining on the legality of a district's recording 911 telephone calls). In our opinion, a 911 tape made in accordance with those assumptions would be a public record open for inspection pursuant to T.C.A. § 10-7-503 and copying pursuant to T.C.A. § 10-7-506, unless otherwise provided by state law. The definition of a "public record" expressly includes sound recordings. T.C.A. § 10-7-301(6) (1992).

The General Assembly has provided exceptions to section -503's rule of openness in T.C.A. § 10-7-504 (1992). No exception for "911 tapes" per se appears in this statute. The exceptions set forth in § 10-7-504 are not exclusive, and statutes dealing with the subject matter in question also must be examined when analyzing a question under the Public Records Act. Thus, we also have examined the Emergency Communications District Law, and no confidentiality is provided by these statutes

for a telephone request to number 911 for emergency services.

As your opinion request contemplates, the answer to whether a 911 tape is open for public inspection could vary, however, depending upon the facts and circumstances of the particular tape in question. In *Appman v. Worthington*, 746 S.W.2d 165 (Tenn.1987), the Court held that records of a certain investigation were not available for inspection under the Public Records Act because the records were relevant to a pending criminal prosecution. Also, for example, the General Assembly has provided that "all records concerning reports of child sexual abuse" shall be confidential in order to protect the child and persons responsible for the child's welfare, and such records may only be disclosed as authorized by statute. T.C.A. § 37-1-612 (1991). It is conceivable that a request for emergency services to number 911 could also constitute a record concerning a report of child sexual abuse, depending upon the contents of the call. Similarly, some other provision of state law might provide otherwise than for public inspection of a particular 911 tape, depending upon the contents of the call, and the facts and circumstances surrounding a particular tape that has been requested.

*3 In summary, it appears generally that a 911 tape made or received by a state or local governmental agency in connection with the transaction of its official business would be a public record open for inspection in accordance with T.C.A. § 10-7-503. We have found no state law providing otherwise for "911 tapes" per se. Because the contents of a 911 tape may vary, however, along with the facts and circumstances surrounding a particular tape, each request to inspect a 911 tape should be examined on a case-by-case basis.

Sincerely,

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